

Missouri Small Business Regulatory Fairness Board

2009



Annual Report



Missouri Small Business Regulatory Fairness Board (SBRFB)

*Randy Angst, Chairman • Bob Bess • Shelia Forrest • Phillip Franz • Sadik Kukic • Shane Libel
Micheal Ocello • Representative Luke Scavuzzo • Nancy Zurbuchen, Vice Chairman*

The Honorable Jeremiah "Jay" Nixon, Governor
State of Missouri

The Honorable Charlie Shields, President Pro Tem
Missouri Senate

The Honorable Ron Richard, Speaker
Missouri House of Representatives

Dear Governor Nixon, President Pro Tem Shields and Speaker Richard:

The Missouri Small Business Regulatory Fairness Board (SBRFB) is key to economic development in the state. We are the board that works 'hands-on' with both small business owners and agency representatives for the purpose of improving the business climate for all small businesses.

This marks our 5th year in existence, and we have made significant progress over the years in working interactively with agencies to ensure the small business perspective is addressed as new rules are made. Small business owners have relied on us to address urgent and difficult issues, both large and small. We have reviewed many hundreds of regulations, acted upon dozens, and have made a difference for many small businesses to be competitive in the marketplace.

As we look back over the last 5 years, it is clear that this board is most effective when three elements are at play: 1) there are no vacant appointments and the board members are engaged and active; 2) agencies are cooperative and collaborative with the board; and 3) there is appropriate administrative support. We look forward to continuing to work on all three areas, as we move the board to a higher level of efficiency and increased work load in the upcoming year.

Our board members are mostly small business owners themselves. Unlike many other boards whose members are employees of government, non-profit, or for-profit companies -- small business owners are not being paid for the time they spend doing the work of the board. Quite the opposite -- most actually lose money when they take time away from their companies to attend board meetings. This is an indication of how important the SBRFB is to the small business community, and how important a friendly small business environment is to the state.

Note that being 'friendly to small business' is not an end unto itself; rather, the purpose of this board is actually the by-product of what happens when a state is friendly to small business: *positive economic development in the state of Missouri.*

Ultimately, this is all about economic development and job creation.

Sincerely,
Missouri Small Business Regulatory Fairness Board

Missouri Small Business Regulatory Fairness Board

Background

The Missouri Small Business Regulatory Fairness Board (SBRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements:

- 1) State agencies take into account small businesses when promulgating new rules;
- 2) State agencies take into account small businesses when enforcing new rules and regulations;
- 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed;
- 4) Established the Small Business Regulatory Fairness Board;
- 5) Granted judicial review to small businesses; and
- 6) Defined small businesses as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456, provides staffing and support for the Commission.

Board Responsibilities

HB 576 and SB 456 states three main responsibilities for the board:

- 1) Provide State Agencies with input regarding rules that adversely affect small businesses;
- 2) Solicit input and conduct hearings from small business owners and State Agencies regarding any rules proposed by a state agency; and
- 3) Provide an evaluation report to the Governor and the General Assembly, including any recommendations and evaluations of State Agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, State Agency responses, and a summary of any public testimony on rules brought before the board for consideration.

Meetings

Five meetings were held in FY2009 by the Board on the following dates and at the following locations:

- September 3, 2008, Springfield
- October 27, 2008, Conference Call
- February 3, 2009, Jefferson City
- May 27, 2009, Conference Call
- June 24, 2009 Jefferson City

In addition the SBRFB held three Public Hearings in accordance with the September, February, and June meetings in Jefferson City and Springfield for small business testimonies.

Regulatory Alert Subscription

The SBRFB offers small businesses the opportunity to join a Regulatory Alert Service. The SBRFB will be sending out Regulatory Alerts to interested small businesses via email of rules and regulations with a small business impact statement as they come in effect. The Regulatory Alerts will be sorted by State Agency and each small business will have the opportunity to choose which State Agencies they would like to receive alerts from. The system allows businesses to subscribe and unsubscribe at any time. There is no cost for the subscription and anyone can participate. To subscribe and unsubscribe small businesses will visit the SBRFB website at www.sbrfb.ded.mo.gov and click on the Subscribe to Regulatory Alerts button.

Missouri Small Business
Regulatory Fairness Board

Fiscal Year 2009

Recommendations for State Agencies

In fulfilling its duties outlined in 536.310 RSMo, the Board shall provide an evaluation report to the governor and the general assembly. The SBRFB informed the state agencies of the criteria from which the evaluation would be based. The criteria included: responding to small business comments in a timely manner, providing a complete response to small business comments, establishing a non-retaliation policy regarding small business comments, participating in regulatory fairness hearings at the request of the SBRFB, training agency staff on Small Business Impact Statements, completing Small Business Impact Statements, notifying the SBRFB of comments received from the public hearing process and in the case of odd numbered years, submitting a biennial evaluation of rules the agency has that have an impact on small business.

Fiscal Year 2009 State Agency Evaluation

STATE AGENCY	RESPOND TO SMALL BUSINESS COMMENTS IN TIMELY MANNER	PROVIDE COMPLETE RESPONSE TO SMALL BUSINESS COMMENTS	NON-RETALIATION POLICY	PARTICIPATE IN REGULATORY FAIRNESS HEARINGS	TRAIN AGENCY STAFF ON SBRFB PROGRAMS	COMPLETE SMALL BUSINESS SBIS	NOTIFY SBRFB ON SMALL BUSINESS COMMENTS IN PUBLIC HEARINGS	CONDUCT BIENNIAL EVALUATIONS OF RULES AFFECTING SMALL BUSINESS
Office of Administration	A	A	F	A	D	A	N/A	A
Agriculture	A	A	F	A	F	A	N/A	A
Conservation	A	A	F	A	A	A	N/A	N/A
Corrections	A	A	A	A	A	A	N/A	A
Economic Development	A	A	A	A	A	A	N/A	A
Elementary & Secondary Education	A	A	A	A	A	A	N/A	A
Higher Education	A	A	F	A	A	A	N/A	A
Health & Senior Services	A	A	A	A	A	A	N/A	A
Insurance, Financial & Professional Registration	A	C1	A	A	A	A	N/A	A
Labor & Industrial Relations	A	A	A	A	A	A	A	A
Mental Health	A	A	A	A	A	A	N/A	A
Natural Resources	A	A	A	A	A	A	A	A
Public Safety	A	A	A	A	B	A	N/A	A
Revenue	A	A	A	A	A	A	N/A	A
Social Services	A	A	C	A	A	A	N/A	A
Transportation	A	A	A	A	A	A	N/A	A

C1 Findings have not been submitted, only a verbally response has been received.

Areas of Improvement

One area needing improvement is for agencies to create an internal process whereby information about the SBRFB is part of an orientation for new employees, as well as employees new to their positions. This fiscal year included significant turn-over of state employees and appointees, given the election of a new state Governor. Therefore, we will work with agencies to help ensure this happens.

The board continues to seek improvement regarding the *direct involvement of small businesses* during the promulgation stage of rule development. Because of the aforementioned turnover of personnel, this is a continuing education challenge for us. The small business impact statement asks each department to describe HOW they engaged small businesses during the development of the regulation. For example, sometimes the agencies listed boards or committees – or a vague ‘we announced a public hearing’ – to cover their small business involvement. The SBRFB needs additional information about the composition of these workgroups to ensure that small business owners were participating. We believe that the involvement of small businesses at the beginning will help to minimize legal challenges, avoid delays, improve public support, and improve compliance with the regulation. Involvement can be accomplished by performing outreach to directly affected small businesses, industry and professional associations, and tracking small business participation in public hearing, round tables and forums.

SBRFB:

The biggest area for improvement is that the Board needs additional administrative support. We have accomplished much in our 5 years of existence, but in some ways we are only skimming the surface and hitting the high points; there is so much more we could do to improve economic development with just a little more support. Specific areas of performance that additional support would enable us to do:

- 1) More complete rule review: The SBRFB is concerned with the amount of regulations and changes to regulations occurring each year. There are a vast number of regulations on the books that businesses, both large and small, have a difficult time keeping up with. In FY2009, the Missouri Register totaled 2,539 pages of emergency rules, proposed regulations, order of rulemaking, notices of dissolutions and executive orders. Currently we are able to act upon the most obvious ones.
- 2) Better monitoring of agency interaction with the SBRFB: The SBRFB received 206 impact statements this fiscal year. We need to monitor the Missouri Register to ensure proper compliance, because if an agency determines that a rule does not have an impact on small businesses, the SBRFB never sees an Impact Statement on the new rule. We currently do not have the administrative support hours to follow-up on these types of reviews.
- 3) Outreach to the community so that small business owners know that we exist.
- 4) Better performance of our core activities: At this stage of our progress and development, the more successful we are, the more overwhelmed we are on the administrative side. For instance, once we reach a small business that provides new testimony, this begins an involved process of communication, tracking, and follow-up that can continue for many months.
- 5) Deeper review of the agencies' Biennial Evaluation of all Rules affecting Small Businesses submitted to the SBRFB in 2009. This was required by statute, and resulted in literally thousands of pages of data, and we are certain it also represented significant employee hours to create in each agency. Therefore, we do not want this work to simply be put on a shelf; we desire to make use of it as we review it with small businesses in mind.

SBRFB FY-2010 Plans

The SBRFB will act in the interest of small businesses across the state of Missouri by continuing to:

- Respond to comments received via Comment Form and Public Hearings
- Hold Public Hearings across the state allowing the small business voice to be heard
- Populate and monitor the Regulatory Alerts that help to create awareness for small business owners when dealing with state agency regulatory matters
- Create a good, interactive working relationship with Missouri State Agencies with expectations of decreasing the unfair burdens on small businesses
- Confirm the state agencies have complied with the specific recommendations of the SBRFB and conduct annual agency evaluations accordingly

In addition, our focus will be on collaboration and outreach for FY2010. The purpose is to reach and inform small business owners about the existence and purpose of the SBRFB. We will update all forms of communication (web, print) and create an outreach plan. The plan will rely heavily on working with non-profits, professional associations, and individuals across the state. In addition, a collaborative approach with Joint Committee on Administrative Rules (JCAR) and the Department of Economic Development (DED) to improve the regulatory outlook for small businesses across the state.

Fiscal Year 2009 Small Business Comments

1. Mark Prather, Mikey's One Stop, Iberia, 11/08
2. Karen Werner, Apple Tree Academy & Big Top Child Development Center, Jefferson City, 12/08

Mark Prather

Mark Prather, an owner of a small convenience store outside of Iberia, submitted comments seeking relief from the Department of Agriculture's (MDA) findings on non-compliance. Mr. Prather's store did not comply with regulation regarding the storage, handling or use of flammable or combustible liquids, and if he did not comply with the rule, the MDA would remove his pumps from service. Mr. Prather expressed he has been in business for 15 years and as a small businessman it was becoming impossible for him to keep up with the regulation changes.

SBRFB Response: The Board sent a letter to the Department of Agriculture requesting an investigation of Mr. Prather's comments, and scheduled a Public Hearing for February 3, 2009 to receive testimony from Mr. Prather and MDA.

SBRFB State Agency Response: SBRFB Public Hearing, February 3, 2009, the MDA stated Mr. Prather's tanks were being used beyond their original design. The MDA stated they realized and identified the hardship imparted on some small business owners but they were only enforcing the 1996 standards. The MDA stated that it encourages all business owners to comply with the EPA regulation because they could face fines of \$60,000 and immediate closure of their business.

SBRFB Response: SBRFB concluded that the MDA was within its purview to cite Mr. Prather for safety violations, and that his issue did not fall within the jurisdiction of the statute governing the SBRFB.

Karen Werner

Karen Werner, owner and operator of two Child Care Centers in Jefferson City, submitted letters to the Department of Health and Senior Services (DHSS), Division of Regulation and Licensure, about her concerns: 1) The MO DHSS rule regarding the on-line public access to findings an inspection. 2) The DHSS's Administrative Policy 11/29, Small Entity Protection from Retaliation.

SBRFB Response: The SBRFB sent a letter to the DHSS requesting that they conduct a complete and thorough investigation of Ms. Werner's concerns and upon completion of the investigation, a copy of the findings be sent to Ms. Werner and the SBRFB.

State Agency Response: The SBRFB conducted a Public Hearing on February 3, 2009 in Jefferson City. The results of the hearing were as follow: 1) DHSS recognized that there is a discrepancy in the rules based on the fact the last rule revision occurred in 1991. 2) The DHSS new rules are an attempt to standardize and maintain uniformity and recognize they do have discrepancies to address, specifically with the education of SIDS and inconsistencies with State Fire Marshall and Environmental inspections.

SBRFB Response: At the February 3, 2009 Public Hearing, the SBRFB recommended that DHSS and state licensed day care providers continue to review the information presented and for DHSS to ensure rules are fair and equitable before launching the changes.

State Agency Response: The SBRFB received a letter from DHSS (September 23, 2009), concluding that Ms. Werner's allegations could not be substantiated, however, DHSS remains committed to working with Ms. Werner to resolve her questions or concerns related to DHSS.

Karen Werner

Karen Werner, owner and operator of two Child Care Centers in Jefferson City, filed a Second Comment with the SBRFB on May 14, 2009. Ms. Werner alleged that DHSS had been enforcing its regulations against her in a retaliatory manner due to her First Comment.

SBRFB Response: The SBRFB sent a letter to DHSS regarding Ms. Werner's Second Comment.

State Agency Response: On June 15, 2009, the DHSS sent the Board a letter. The DHSS informed the Board that it was conducting an investigation and the DHSS agreed to give the Board periodic updates on the status of its review and investigation.

Missouri Small Business Regulatory Fairness Board FY2010 Recommendations for State Agencies

The major goal of the SBRFB is to encourage a partnership between small businesses and state agencies regarding the promulgation, enforcement, and review of rules and regulations affecting small businesses. The SBRFB believes small businesses are, collectively, the backbone of economic development in Missouri. Having a healthy environment for small businesses to thrive is good for every aspect of social and economic life in Missouri, either directly or indirectly.

The SBRFB believes that the best way to achieve a systemic betterment of the small business environment in MO is through straightforward communication with the state agencies. The board has created several processes toward that end, including the information in this document.

State agencies have a great opportunity to become a proactive part in the economic success of small business in MO. Working with the SBRFB will ultimately result in higher compliance and fewer complaints.

The SBRFB is charged with tracking and providing results of agency compliance with SBRFB efforts. Providing feedback to the agencies is of prime importance, as is agency cooperation and communication back to the board. Below is a checklist of action items that the SBRFB has created so that state agencies have a clear understanding of what the board is looking for during this fiscal year.

1. Respond to Small Business Comments in a Timely Manner
 - a. SBRFB tracks response time from the day we forward a comment to an agency until the day we receive that agency's response. We will calculate timeliness in FY 2010 by defining "days" for rating purposes as calendar days.

60 Days or less	=A
60-75 Days	=B
75-90 Days	=C
90-105 Days	=D
Over 105 Days	=F

1. Provide a Full and Complete Response to Small Business Comments
 - a. When SBRFB receives a comment from a small business concerning a regulatory issue, we forward that comment along with any substantiating documentation to the State agency involved. The answers help SBRFB to assess the agency's responsiveness, how thoroughly it considered the effects of its actions, and whether any follow-up occurred. We consider the level of specificity and detail provided in each agency's response, and determine grades according to the following criteria:
 - The agency addressed all applicable questions posed in SBRFB's correspondence and responded to the specific comment made by the small entity.
 - The agency investigates the specific comment to ensure that the small entity was treated fairly and that their size was taken into account. The agency response provides detailed information regarding this investigation and the actions of the agency personnel involved in the enforcement activity.
 - The response came from the SBRFB liaison representative or someone from the agency directly related to the comment.
 - The agency utilized the specific comment to evaluate how similar small business situations are handled with respect to small business regulatory fairness and make any appropriate business practices changes.
2. Establish a Non-Retaliation Policy for Small Businesses
 - a. SBRFB defines "non-retaliation" policies as those designed to prevent acts that punish a small entity for objecting to an agency action. The SBRFB requires an agency to provide a copy of its policy, as well as the web address for those policies that are available to the public. If an agency demonstrates that all of the following elements exist, it will receive a letter grade of A:
 - The agency has adopted a written non-retaliation policy including disciplinary action for violation.
 - The agency ensures that its employees are properly trained on the non-retaliation policy.
 - The agency ensures that small entities are informed about and may access its non-retaliation policy.
3. Participate in Regulatory Fairness Hearings
 - a. Agency participation in RegFair Hearings is a key element of the program. Small business comments can be fully developed during the hearing. In many cases, agency and small entity communication begins immediately leading to prompt resolution of the situation. At many hearings, one or two agencies are invited, in advance, to give presentations regarding their approach to small business regulatory fairness. Such participation will weigh heavily in the evaluations. Additionally, when SBRFB knows that a small business entity is scheduled to testify on issues relating to the agency, the agency will be contacted directly at least 48 hours prior to such a hearing. SBRFB will post a rating of N/A when there were no agency issues presented at a RegFair Hearing.
4. Train Agency Staff on Missouri Small Business Regulatory Fairness program
 - a. State agencies should provide training on an annual basis, for all rule development, enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Missouri Small Business Regulatory Fairness program. If an agency demonstrates that all of the following elements exist, it will receive a letter grade of A:
 - The agency provides and is able to document Regulatory Fairness training for all staff involved in the rule promulgation process including staff names and dates of training completion.

- The content of the training includes SBRFB law and basic info on SBRFB: small business involvement during the rule development process, small business impact statements, small business comment compliance, post public hearing statements, Biennial Report, etc. The agency may choose to utilize the SBRFB Compliance Training CD to fulfill this requirement.

5. Complete Small Business Impact Statement on Rules affecting Small Businesses

- a. State agencies should include a small business impact statement for every proposed rule that impacts small businesses. A preliminary analysis should be conducted to identify those rules impacting small businesses. Those rules promulgated on an emergency basis, federally mandated or codify existing federal or state law shall not be required to submit a small business impact statement and should be stated as such in the agency's letter to the secretary of state. All other rules impacting small business shall be required to file a small business impact statement with the SBRFB. If an agency completes all of the following elements on all rules affecting small businesses, it will receive a letter grade of A:
 - Describe the methods your agency considered or used to reduce the impact on small businesses.
 - Explain how your agency has involved small businesses in the development of the proposed rule. Which small businesses did your agency contact? Who participated in the meeting?
 - List the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.
 - Describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.
 - List direct and indirect costs (in dollars amounts) associated with compliance.
 - List types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.
 - Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

6. Notify SBRFB on Small Business Comments in Public Hearings

- a. For any proposed rules that affect small business, the state agency shall submit a small business post public hearing statement to the SBRFB after a public hearing is held. This requirement shall not be applicable to emergency rules. If an agency completes all of the following elements, it will receive a letter grade of A:
 - Include every rule that affects small business.
 - Describe how the opinions or comments from affected small businesses were solicited.
 - Summarize the public and small business comments.
 - Summarize the agency's response to those comments.
 - Number of persons who attended the public hearing, testified at the hearing, and submitted written comments.
 - If a request to change the proposed rule was made at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change shall be included in the post public hearing statement.

Legacy: Small Business Comments

- 1) Rita Larson, Wind Generator Hauling Lease Anderson Trucking Service, Kingsville, 7/9/2007
- 2) Linda Sohm, Midwest Game Supply Company, Kearney, 12/14/2007
- 3) Scott George, Mid-America Hearing Center, Mt. Vernon, 2/6/2008
- 4) Bruce Mayhew, Beltone Hearing Aid Center, Cape Girardeau, 2/7/2008
- 5) Joyce Hill Cooley, Miracle Ear, Perryville, 2/8/2008
- 6) Floyd Hansett, Hearing Solutions, Mexico, 2/8/2008
- 7) Bernard Libel, Libel Hearing Aid Center, Saint Joseph, 2/12/2008
- 8) Samuel Hopmeier, Hearing Aid Center, Chesterfield, 2/13/2008
- 9) Nancy Frasier Ellis, Lake Prof Hearing Aid Center, Camdenton, 2/15/2008
- 10) Robert Allison, Allison Assistive Hearing, Arnold, 3/19/2008
- 11) Raymond Young, Milk Regulatory Consultants, Russellville, 5/5/2008
- 12) Jonathan Justus, Justus Drugstore, Smithville, 6/27/2008
- 13) Sam Topchian, Quick and Safe LLC, Kansas City, 3/20/2007
- 14) Brenda Newberry, The Newberry Group, Saint Charles, 1/25/2006
- 15) Nancy Good, The Title Place, Joplin, 10/2/2006
- 16) Russ Henry, IdentiPro, Kansas City, 9/29/2006

Linda Sohm

Ms. Sohm is the owner of Mid West Gaming Supply and sent in a comment on a new regulation published by the Department of Public Safety-Missouri Gaming Commission. This regulation impacts her directly within her industry. The rule sets forth, on top of the current regular \$5,000 a year she spends, licensing additional key personnel and charging \$1000 for each to investigate and \$100 year to keep them licensed. The rule doesn't relay who deciphers how many people would be called key personnel.

The small business impact statement listed Ms. Sohm's business as the only small business affected by the new regulation. She was never contacted during the development of the rule.

State Agency Response: No response has been received in the 60 day time period.

SBRFB Response: The Board sent a reminder letter on March 5 to the Department of Public Safety stating that their timely correspondence is reflected in the evaluations. The SBRFB also sent an invitation to the May 6 Public Hearing to the Gaming Commission to discuss this comment.

State Agency Response: Gene McNary attended the May 6 Public Hearing and testified about Ms. Sohm's comment. Mr. McNary testified that the license fee may be waived at the discretion of the Executive Director of the Gaming Commission if they deem there is a hardship. This is administered through an inter-agency policy and there is nothing in written form that says who and what the Executive Director will consider in order to waive the fee. He also testified that there is a definition of who qualifies as key personnel but would have to get back to the Board on the exact information.

SBRFB Response: The Board sent additional correspondence asking for clarification regarding the definition of key personnel to be certified and whether or not this is policy driven or a state regulation. The Board also would like to know what the criteria are for the Executive Director when waiving fees. Is there anything in written format to guide the Director?

State Agency Response: The Agency responded citing the definitions found in 11 CSR 45-4.020(3) relating to a “key person” and “key person business entity.” 11 CSR 45-4.380(9) states that the “executive director may waive or modify licensing fees. Exemption shall not be applicable for testing laboratories.” This is a case by case waiver at the discretion of the Executive Director.

Scott George
Bruce Mayhew
Joyce Hill Cooley
Floyd Hansett
Bernard Libel
WF Samuel Hopmeier
Nancy Ellis Frasier
Robert Allison

All the following comments came from individuals who own and operate hearing centers across the State of Missouri. The proposed rule, 1 CSR 70-1.010/5 CSR 110-1.010, restricts Missouri licensed Hearing Instrument Specialists (HIS) from designating telecommunications equipment and from providing consumer support and continuity of care to their patients. Hearing Instrument Specialists are on the front line of accessibility and information to the hearing impaired. Their public advertisement of services available to hearing handicapped educates not only the hard of hearing but the family support system. All encouraged the Missouri Assistive Technology Council (MATAC) to follow precedent of MO Medicaid rule 13 CSR 70-45.010, by allowing Audiologists, Hearing Instrument Specialists, and Physicians to select and distribute equipment and counsel patients on appropriate use. All wrote directly to the Missouri Assistive Technology Advisory Council and copied the SBRFB on each of their letters. The SBRFB in turn sent copies of the comments to the Office of Administration and Department of Elementary and Secondary Education to ensure and begin proper correspondence with these eight comments. The comments were in response to the filing of 1 CSR 70-1.010/5 CSR 110-1.010 to which was filed without an impact statement.

State Agency Response: No response was received in the 60 day time period.

SBRFB Response: The SBRFB sent an invitation to the Office of Administration, Department of Elementary and Secondary Education and the Missouri Assistive Technology Advisory Council inviting them to attend the May 6, 2008 public hearing and participate by speaking toward the eight comments. At the hearing Nancy Frasier Ellis and Scott George testified on how this rule impacts them. The MATAC sent a letter to be entered into record about their program and services but the letter did not address the comments made by any of the eight small businesses. The Board sent a reminder letter to the Office of Administration and Department of Elementary and Secondary Education.

State Agency Response: **Response has been received.**

Raymond Young

The Missouri State Milk Board has denied Mr. Young’s company, Milk Regulatory Consultants (MRC), under the NCIMS Grade milk program as an official designated commercial laboratory and has blocked MRC from bidding on any state contracts due to the lack of certification. Mr. Young has 18 years experience with milk regulatory inspection with the Department of Health

and Senior Services including the oversight enforcement of grade milk; he then embarked on opening his own regulatory consulting laboratory. In order to become a certified laboratory MRC needs to be approved and certified by the Missouri Milk Board. It is a requirement in Missouri that only certified companies may test milk. The initial request was first tabled by the Milk Board in June 2007 and then in August 2007. Mr. Young received a letter that denied his request for the certification of his laboratory. It was conveyed that there was no need for additional laboratories. Mr. Young then requested a hearing and was told that he could not have a hearing because he was not Grade A certified. No information was provided about the denial and no evaluation of his laboratory was included. In the meantime, MRC was awarded a contract with the federal government. MRC was one of three laboratories awarded this contract in the world. This is recognition not only for the business but for a Missouri owned business. Because MRC is not certified, Mr. Young contracted the work out in order to stay within the parameters of the law and fulfill the contract that was granted by the federal government.

State Agency Response: The Department of Agriculture referred the SBRFB to the Attorney General's Office due to the Department being in litigation with MRC.

2009 Agency Response: A thorough investigation of the complaint resulted in a mutually agreeable settlement of the issue raised by the Milk Regulatory Consultants, LLC and Mr. Raymond Young.

Brenda Newberry

Ms. Newberry is the owner of the Newberry Group. Ms. Newberry's comment was in relation to the requirement for a proposal security deposit. This is not something experienced when bidding in other states or when bidding on contracts worth well over \$3 M with the Federal Government for Information Technology. As indicated, neither the federal government nor other states require such a thing for IT services contracts because normally, as was the case for this RFP, the work is done as T&M or FFP with specific task orders containing the specific scope of work.

State Agency Response: The Office of Administration testified that the Division of Purchasing and Materials Management has implemented a policy that requires the State's Purchasing Director to approve proposal security deposit requirements. This policy will ensure that such deposits are required when the circumstances truly dictate such need. The state must consider all factors in its decision regarding economic impact and ownership residence is just a piece of the overall evaluation. Regarding your suggestion to use a vendor's lack of ability to acquire Federal Security clearances as a tool to disqualify bidders from performing cyber security work, we believe there may be some merit to this idea and will review this with the State's Chief Information Officer.

SBRFB Response: The Board sent a follow up letter on January 31, 2008 to confirm the testimony of the Office of Administration and encourage the department to veer away from desk drawer type rules.

State Agency Response: A response has not been received within the 60 day time period. The Board was in agreement to send a second reminder letter to the Office of Administration stating that their timely correspondence is reflected in the evaluations.

SBRFB Response: No response has been received after two reminder letters were sent to the Office of Administration.

Membership

Board Members

Chairman Randy Angst, Chair, gubernatorial appointment
Bailey's TV
Lebanon

Vice Chairman Nancy Zurbuchen, gubernatorial appointment
President, Motional Multimedia
Kansas City

C. Bob Bess, gubernatorial appointment
Retired - small business owner
St. Louis

Shane Libel, appointed by the Senate Majority Leader
NWMSubway
St. Joseph

Sheila Forrest, Chair, Minority Business Advocacy Commission
President, Afro World Hair and Fashion Company
St. Louis

Phillip Franz, appointed by the House Majority Leader
Franz Foods
West Plains

Micheal Ocello, appointed by the Senate Minority Leader
President Unique Entertainment Consultants, Inc.
VCG Holding Corp. NASDAQ: VCGH
St. Louis,

Representative Luke Scavuzzo, appointed by the House Minority Leader
Harrisonville

Vacancy

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2009 Annual Report

Missouri Small Business Regulatory Fairness Board

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